



**Mbiuki & 4 others v Mwaniki & another (Civil Application
152 of 2018) [2025] KECA 1516 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KECA 1516 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 152 OF 2018
W KARANJA, J MOHAMMED & LK KIMARU, JJA
SEPTEMBER 19, 2025**

BETWEEN

**ASHFORD KAUGI MBIUKI 1ST APPLICANT
BRIDGET GEORGE MBIUKI ALIAS BIRDGET IGOJI
GEORGE 2ND APPLICANT
GILBERT KINYUA MBIUKI 3RD APPLICANT
WILFRED KAARIA MBIUKI 4TH APPLICANT
FRANKLIN MUGAMBI MBIUKI 5TH APPLICANT**

AND

**GEORGE WAMAE MWANIKI 1ST RESPONDENT
JULIUS MUNGATHIA 2ND RESPONDENT**

(Being an application for an order of injunction and/or inhibition pending the hearing and determination of the intended appeal against the judgment of the Environment and Land Court at Chuka (P.M. Njoroge, J.) dated 19th December, 2018 in ELC Case No. 3 of 2018)

RULING

1. Before the Court is a notice of motion of application dated 24th December, 2018, brought under Rule 5(2)(b) of the Rules of this Court. The applicants seek an order of injunction, restraining the respondents and their agents from entering, occupying or dealing in any manner with parcel number Kiera/E.Magutuni/2048 (hereinafter ‘suit property’); or in the alternative, an order of the Court placing an inhibition against any form of dealings with respect to the suit property, pending hearing and determination of their appeal. The application is supported by grounds on its body and a supporting affidavit sworn on the same date, together with annexures thereto.



2. The applicants urged that they have been in occupation of the suit property since 1992, and that their intended appeal is arguable, and will be rendered nugatory, if orders sought are not granted. The applicants filed a further supporting affidavit dated 8th December, 2022. In the affidavit, the applicants deponed that the 2nd respondent, George Wamae Mwaniki, had evicted them from the suit property in 2019, a few months after the judgment of the superior court, and prior to the hearing of this application. The applicants averred that their prayer for injunctive orders had been overtaken by events. They urged us to allow the alternative prayer for inhibition orders to preserve the substratum, as the suit property is likely to change hands, and render their appeal, if successful, nugatory.
3. The background of the application is that the applicants instituted a suit against the respondents before the superior court, claiming to have acquired ownership rights over the suit property by way of adverse possession. The applicants urged the superior court to cancel the title held by the 2nd respondent's with respect to the suit property. It was the applicants' case that the suit property was family land, originally registered to the 1st respondent, who is their uncle. The applicants averred that their father purchased the suit property from the 1st respondent in 1992, and took possession thereof. That they enjoyed quiet and peaceful possession of the suit property, until they discovered that the 1st respondent had clandestinely transferred the suit property to the 2nd respondent in 2010.
4. The 1st respondent, on the other hand, contended that the applicants occupied the suit property with his permission, and that they refused to vacate the suit property once he informed them that he had sold the parcel to the 2nd respondent in 2010. The applicants' suit was dismissed by a judgment of the court (P.M. Njoroge J.), dated 19th December, 2018. The applicants' intended appeal seeks to challenge this decision of the superior court.
5. The application was unopposed. Neither of the respondents lodged a response to the application.
6. The application was canvassed by way of written submissions, duly filed by the applicants, through their counsel. The applicants urged that their appeal is arguable as the learned Judge misconstrued the evidence and the law on adverse possession. Counsel urged that since the applicants have since been evicted from the suit property, their prayer was for preservation orders with respect to the suit property, as the property was likely to change hands, which would render their appeal nugatory.
7. We have considered the application, the grounds in support thereof, the replying affidavit, the applicant's submissions, the authorities cited and the law. The principles for granting injunctive reliefs under Rule 5(2)(b) of this Court's Rules are well settled. The applicant is required to show that his appeal is arguable, and that unless the injunctive reliefs sought are not granted, the applicant's intended appeal, if successful, will be rendered nugatory. (See *Trust Bank Limited and Another v. Investech Bank Limited and 3 Others* [2000] eKLR.)
8. In the present application, the applicants admit that following the delivery of the judgment they were evicted from the suit property. The suit property had prior thereto been transferred to the 2nd respondent by the 1st respondent. The applicants plead with the Court to issue an inhibition order in the title of the suit property so that the 2nd respondent disposed it to 3rd parties during the pendency of the appeal. There was no response on the part of the respondents. The applicants claim that the 1st respondent who is their uncle, sold the suit property which was the portion of land that their father was supposed to inherit in view of the fact that the suit property was family land. This Court cannot dismiss the applicants' claim off hand and is prepared to hold that their intended appeal is not frivolous and is arguable. As held by this Court on various occasions, an arguable appeal is not the one that must necessarily succeed but is the one which is amenable for full confirmation by the court. We therefore hold that the applicants have satisfied the first limb under Rule 5(2)(b) of the Court of Appeal Rules.



9. As regards whether the intended appeal will be rendered nugatory, the applicants concede that the main thrust of the application has been overtaken by events. They have already been evicted from the suit property. There is nothing to restrain. However, they plead that this Court issues an inhibition order in the title of the suit parcel of land pending the hearing and determination of the appeal. We do not think that the applicants had made a case for this Court to grant them the later order because it is clear that if the intended appeal succeeds, the transfer to the 2nd respondent and any other party will be reversed. The doctrine of lis pendens would apply to put on notice any 3rd party that may be tempted to purchase the suit property during the pendency of the appeal.
10. In the premises therefore, the application lacks merit and is hereby dismissed but with no orders as to costs.

DATED AND DELIVERED AT NYERI THIS 19TH DAY OF SEPTEMBER, 2025.

W. KARANJA

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JUDGE OF APPEAL

JAMILA MOHAMMED

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JUDGE OF APPEAL

L. KIMARU

.....

JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

DEPUTY REGISTRAR.

